

Chapter 136.
Transportation.

Article 1.

Organization of Department of Transportation.

§§ 136-1 through 136-3: Repealed by Session Laws 1973, c. 507, s. 23.

§ 136-4. Chief Engineer.

There shall be a Chief Engineer, who shall be a career official and who shall be the administrative officer of the Department of Transportation for highway matters. For purposes of this section, the term "highway matters" includes planning, design, construction, maintenance, operations, procurements, agreements, delivery methods, standards, and specifications for current and future State-maintained roads. The Chief Engineer shall be appointed by the Secretary of Transportation and he may be removed at any time by the Secretary of Transportation. He shall be paid a salary to be set in accordance with Chapter 126 of the General Statutes, the North Carolina Human Resources Act. The Chief Engineer shall have such powers and perform such duties as the Secretary of Transportation shall prescribe. (1921, c. 2, ss. 5, 6; C.S., s. 3846(g); 1933, c. 172, s. 17; 1957, c. 65, s. 2; 1961, c. 232, s. 2; 1965, c. 55, s. 3; 1973, c. 507, s. 22; 1975, c. 716, s. 7; 1977, c. 464, s. 11; 1983, c. 717, s. 45; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1985, c. 757, s. 191; 2012-85, s. 4; 2013-382, s. 9.1(c); 2016-94, s. 35.26(a).)

§§ 136-4.1 through 136-5. Repealed by Session Laws 1973, c. 507, s. 23.

§ 136-5.1. Transportation system.

For the purpose of this Chapter, transportation system is defined as all modes of transportation infrastructure owned and maintained by the North Carolina Department of Transportation, including roads, highways, rail, ferry, aviation, public transportation, and bicycle and pedestrian facilities. (2009-266, s. 5.)

§§ 136-6 through 136-9. Repealed by Session Laws 1957, c. 65, s. 12.

§ 136-10. Audit and rules.

The operations of the Department of Transportation shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Rules adopted by the Department of Transportation are subject to Chapter 150B of the General Statutes. (1921, c. 2, s. 24; C.S., s. 3846(m); 1933, c. 172, s. 7; 1957, c. 65, s. 4; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1983, c. 913, s. 25; 1991, c. 477, s. 5.)

§ 136-11: Repealed by Session Laws 2010-165, s. 1, effective August 2, 2010.

§ 136-11.1. Prior consultation on transportation projects.

Prior to any action of the Board on a transportation project, the Department shall inform all municipalities, counties, and utility providers affected by a planned transportation project and request each to submit within 45 days a written resolution expressing their views on the project. A municipality or county may designate a Transportation Advisory Committee to submit its response to the Department's request for a resolution. Upon receipt of a written resolution from all affected parties or their designees, or the expiration of the 45-day period, whichever occurs first, the Board may take action. The Department and the Board shall consider, but shall not be bound by, the views of the affected parties or their designees on each transportation project. The failure of an affected party to express its views within the time provided shall not prevent the Department or the Board from taking action. The Department shall not be required to send notice under this section if it has already received a written resolution from the affected party on the planned transportation project. "Action of the Board", as used in this section, means approval by the Board of: the Transportation Improvement Program and amendments to the Transportation Improvement Program; the Secondary Roads Paving Program and amendments to the Secondary Roads Paving Program; and individual applications for access and public service road projects, contingency projects, small urban projects, and spot safety projects that exceed two hundred fifty thousand dollars (\$250,000). The 45-day notification provision may be waived upon a finding by the Secretary of Transportation that emergency action is required. Such findings must be reported to the Joint Legislative Transportation Oversight Committee. (1998-169, s. 3; 2016-90, s. 1; 2017-57, s. 34.4A(a).)

§ 136-12. Reports to General Assembly; Transportation Improvement Program submitted to members and staff of General Assembly.

(a) The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee by March 1 of each year on how the previous fiscal year's funds for maintenance and construction were allocated and expended. The report shall include expenditures of both State and federal funds and shall be in sufficient detail that the county can be identified. A full account of each road project shall be kept by and under the direction of the Department of Transportation or its representatives, to ascertain at any time the expenditures and the liabilities against all projects; also records of contracts and force account work. The account records, together with all supporting documents, shall be open at all times to the inspection of the Governor or road authorities of any county, or their authorized representatives, and copies thereof shall be furnished such officials upon request.

(a1) Repealed by Session Laws 2011-145, s. 28.35(a), effective July 1, 2011.

(b) At least 30 days before it approves a Transportation Improvement Program in accordance with G.S. 143B-350(f)(4) or approves interim changes to a Transportation Improvement Program, the Department shall submit the proposed Transportation Improvement Program or proposed interim changes to a Transportation Improvement Program to the following members and staff of the General Assembly:

- (1) The Speaker and the Speaker Pro Tempore of the House of Representatives;
- (2) The Lieutenant Governor and the President Pro Tempore of the Senate;
- (3) The Chairs of the House and Senate Appropriations Committees;
- (4) Each member of the Joint Legislative Transportation Oversight Committee; and
- (5) The Fiscal Research Division of the Legislative Services Commission. (1921, c. 2, s. 23; C.S., s. 3846(l); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1989, c. 692, s. 1.3; c. 770, s. 74.16; 1993, c. 321, s.

169.2(d); 1996, 2nd Ex. Sess., c. 18, s. 19.4(c); 2006-203, s. 74; 2011-145, s. 28.35(a); 2018-74, s. 6.)

§ 136-12.1: Repealed by Session Laws 2018-74, s. 3, effective July 1, 2018.

§ 136-12.2: Repealed by Session Laws 2011-145, s. 28.35(a), effective July 1, 2011.

§ 136-12.3. Outsourcing and project delivery reports.

(a) Intent. – It is the intent of the General Assembly to take all steps necessary to assist the Department of Transportation in accelerating project delivery and reducing costs incurred by the State. The General Assembly finds that shifting more control over projects to each of the Highway Divisions can assist in achieving this intent. Further, the General Assembly encourages each Highway Division to increase its outsourcing of preconstruction activities to private contractors to sixty percent (60%) of the total cost of preconstruction activities performed by the Highway Division, with the belief that increased outsourcing will also assist in achieving this intent. Therefore, in order to assess the results from shifting project control and increasing the use of outsourcing, and to determine what adjustments may be necessary to improve upon the results, the General Assembly finds that reports are necessary to collect baseline data to establish appropriate targets.

(b) Outsourcing Report. – For each Highway Division, the Department shall provide a detailed report on all payments made to private contractors for preconstruction activities. In order to compare internal costs incurred with payments made to private contractors, and except as otherwise provided in this subsection, the Department shall include project-specific expenses incurred by division, regional, or central staff. The Department shall not include expenses incurred for central business units that support and oversee outsourcing functions. The information in the first report submitted under this subsection shall be used to establish a baseline to use for setting future preconstruction outsourcing targets. The Department shall submit the report required under this subsection to the Joint Legislative Transportation Oversight Committee by March 1 of each year.

(c) Project Delivery Report. – For each Highway Division, the Department shall provide a detailed annual report in accordance with the following requirements:

- (1) The report shall detail the progress of the following types of projects in the State Transportation Improvement Program current for the period covered by the report:
 - a. Bridge projects with a cost in excess of ten million dollars (\$10,000,000).
 - b. Interstate highway projects.
 - c. Rural highway projects.
 - d. Urban highway projects.
- (2) For each project, the report shall indicate the status of all of the following phases:
 - a. Planning and design in progress.
 - b. Right-of-way acquisition in progress.
 - c. Project let for construction.

- d. Construction substantially complete and traffic using facility.
- (3) For each project, and as applicable, the report shall include an indication and explanation for project stages that are delayed during the period covered by the report and the delay has been for more than one year.
- (4) For each project, the report shall include the planned and actual completion date for any required environmental documentation.
- (5) The Department shall submit the report required under this subsection to the Joint Legislative Transportation Oversight Committee by March 1 of each year.
- (d) Combined Report. – The Department may combine the reports required to be submitted under subsections (b) and (c) of this section into a single report.
- (e) Consultation Required. – If a Highway Division fails to meet the established preconstruction outsourcing target in two consecutive reports submitted under subsection (b) of this section, or if a report submitted under subsection (c) of this section identifies a Highway Division as having three or more project stages delayed for more than one year, the Division Engineer of the Highway Division identified in the report shall consult with the Joint Legislative Transportation Oversight Committee. The Division Engineer shall submit a request for consultation to (i) all members of the Committee, (ii) the chairs of the House of Representatives Appropriations Committee on Transportation if the General Assembly is in session at the time consultation is required under this subsection, (iii) the chairs of the Senate Appropriations Committee on the Department of Transportation if the General Assembly is in session at the time consultation is required under this subsection, and (iv) the Fiscal Research Division of the General Assembly. The request for consultation shall consist of a written report providing an explanation for the failure or delay and a plan for remedying the failure or delay. If the Committee does not hold a meeting to hear the consultation required by this subsection within 90 days after the consultation request has been submitted, the consultation requirement is satisfied. (2017-57, s. 34.13; 2018-74, s. 4.)

§ 136-13. Malfeasance of officers and employees of Department of Transportation, members of Board of Transportation, contractors, and others.

(a) It is unlawful for any person, firm, or corporation to directly or indirectly corruptly give, offer, or promise anything of value to any officer or employee of the Department of Transportation or member of the Board of Transportation, or to promise any officer or employee of the Department of Transportation or any member of the Board of Transportation to give anything of value to any other person with intent:

- (1) To influence any official act of any officer or employee of the Department of Transportation or member of the Board of Transportation;
- (2) To influence such member of the Board of Transportation, or any officer or employee of the Department of Transportation to commit or aid in committing, or collude in, or allow, any fraud, or to make opportunity for the commission of any fraud on the State of North Carolina; and
- (3) To induce a member of the Board of Transportation, or any officer or employee of the Department of Transportation to do or omit to do any act in violation of his lawful duty.

(b) It shall be unlawful for any member of the Board of Transportation, or any officer or employee of the Department of Transportation, directly or indirectly, to corruptly ask, demand,

exact, solicit, accept, receive, or agree to receive anything of value for himself or any other person or entity in return for:

- (1) Being influenced in his performance of any official act;
- (2) Being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or to make opportunity for the commission of any fraud on the State of North Carolina; and
- (3) Being induced to do or omit to do any act in violation of his official duty.

(c) The violation of any of the provisions of this section shall be cause for forfeiture of public office and shall be a Class H felony which may include a fine of not more than twenty thousand dollars (\$20,000) or three times the monetary equivalent of the thing of value whichever is greater. (1921, c. 2, s. 49; C.S., s. 3846(cc); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1965, c. 55, s. 7; 1973, c. 507, s. 6; 1975, c. 716, s. 7; 1977, c. 464, ss. 7.1, 10, 10.1; 1979, c. 298, ss. 3, 4; 1993, c. 539, s. 1308; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 136-13.1. Use of position to influence elections or political action.

No member of the Board of Transportation nor any officer or employee of the Department of Transportation shall be permitted to use his position to influence elections or the political action of any person. (1965, c. 55, s. 8; 1973, c. 507, s. 7; 1975, c. 716, s. 7; 1977, c. 464, ss. 7.1, 10.1; 1979, c. 298, s. 3.)

§ 136-13.2. Falsifying highway inspection reports.

(a) Any person who knowingly falsifies any inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(b) Any person who directs a subordinate under his direct or indirect supervision to falsify an inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(c) Repealed by Session Laws 1979, c. 786, s. 2, effective May 8, 1979. (1979, c. 523; c. 786, s. 2; 1981, c. 793, s. 1; 2005-96, s. 1.)

§ 136-14. Members not eligible for other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official position; misuse of confidential information by Board members.

(a) No Board member shall be eligible to any other employment in connection with the Department.

(b) No Board member or any salaried employee of the Department shall furnish or sell any supplies or materials, directly or indirectly, to the Department.

(c) No Board member shall, directly or indirectly, engage in any transaction involving the sale of or trading of real or personal property with the Department.

(d) No Board member shall profit in any manner by reason of the Board member's official action or official position, except to receive salary, fees and allowances as by law provided.

(e) No Board member shall take any official action or use the Board member's official position to profit in any manner the Board member's immediate family, a business with which the Board member or the Board member's immediate family has a business association, or a client of

the Board member or the Board member's immediate family with whom the Board member, or the Board member's immediate family, has an existing business relationship for matters before the Board.

(f) No Board member shall attempt to profit from a proposed project of the Department if the profit is greater than that which would be realized by other persons living in the area where the project is located. If the profit under this subsection would be greater for the Board member than other persons living in the area where the project is located not only shall the member abstain from voting on that issue, but once the conflict of interest is apparent, the member shall not discuss the project with any other Board member or other officer or employee of the Department except to state that a conflict of interest exists. Under this subsection a Board member is presumed to profit if the profit would be realized by a Board member's immediate family, a business with which the Board member or the Board member's immediate family has a business association, or a client of the Board member or the Board member's immediate family with whom the Board member, or the Board member's immediate family, has an existing business relationship for matters before the Board. Violation of this subsection shall be a Class I felony.

(g) No Board member, in contemplation of official action by the Board member, by the Board, or in reliance on information that was made known to the Board member in the Board member's official capacity and that has not been made public, shall commit any of the following acts:

- (1) Acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit that may be affected by such information or official action; or
 - (2) Intentionally aid another to do any of the above acts.
- (h) As used in this section, the following terms mean:
- (1) "Board". – The Board of Transportation.
 - (2) "Board member". – A member of the Board of Transportation.
 - (3) "Business association". – A director, employee, officer, or partner of a business entity, or owner of more than ten percent (10%) interest in any business entity.
 - (4) "Department". – The Department of Transportation.
 - (5) "Immediate family". – Spouse, children, parents, brothers, and sisters.
 - (6) "Official action". – Actions taken while a Board member related to or in connection with the person's duties as a Board member including, but not limited to, voting on matters before the Board, proposing or objecting to proposals for transportation actions by the Department or the Board, discussing transportation matters with other Board members or Department staff or employees in an effort to further the matter after the conflict of interest has been discovered, or taking actions in the course and scope of the position as a Board member and actions leading to or resulting in profit.
 - (7) "Profit". – Receive monetary or economic gain or benefit, including an increase in value whether or not recognized by sale or trade.

(i) Except as otherwise provided in this section, a violation of this section shall be a Class H felony which may include a fine of not more than twenty thousand dollars (\$20,000), or three times the value of the transaction, whichever amount is greater. (1933, c. 172, s. 10; 1957, c. 65, s. 11; 1965, c. 55, s. 9; 1973, c. 507, s. 8; 1975, c. 716, s. 7; 1977, c. 464, ss. 7.1, 10.2; 1979, ch. 298, s. 3; 1985, c. 689, s. 28; 1993, c. 539, s. 1309; 1994, Ex. Sess., c. 24, s. 14(c); 1998-169, s. 4.)

§ 136-14.1. Transportation engineering divisions.

For purposes of administering transportation activities, the Department of Transportation shall have authority to designate boundaries of transportation engineering divisions for the proper administration of its duties. (1957, c. 65, s. 5; 1965, c. 55, s. 10; 1973, c. 507, s. 9; 1975, c. 716, s. 7; 1993, c. 483, s. 2.)

§ 136-14.2. Division engineer to manage personnel.

Except for general departmental policy applicable to all of the State the division engineer shall have authority over all divisional personnel matters and over Department employees in his division making personnel decisions. (1975, 2nd Sess., c. 983, s. 92.)

§ 136-15. Establishment of administrative districts.

The Department of Transportation may establish such administrative districts as in its opinion shall be necessary for the proper and efficient performance of highway duties. The Department may from time to time change the number of such districts, or it may change the territory embraced within the several districts, when in its opinion it is in the interest of efficiency and economy to make such change. (1931, c. 145, s. 5; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 10; 1975, c. 716, s. 7.)

§ 136-16. Funds and property converted to State Highway Fund.

Except as otherwise provided, all funds and property collected by the Department of Transportation, including the proceeds from the sale of real property originally purchased with funds from the State Highway Fund, shall be paid or converted into the State Highway Fund. (1919, c. 189, s. 8; C.S., s. 3595; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 2007-323, s. 27.15.)

§§ 136-16.1 through 136-16.3. Reserved for future codification purposes.

§§ 136-16.4, 136-16.5: Repealed by Session Laws 2013-360, s. 34.9, effective July 1, 2013.

§ 136-16.6: Repealed by Session Laws 2013-360, s. 34.14(i), effective January 1, 2014.

§§ 136-16.7 through 136-16.9: Repealed by Session Laws 2013-360, s. 34.9, effective July 1, 2013.

§ 136-16.10. Allocations by Department Chief Financial Officer to eliminate overdrafts.

The Chief Financial Officer of the Department of Transportation shall allocate at the beginning of each fiscal year from the various appropriations made to the Department of Transportation for State Construction, State Funds to Match Federal Highway Aid, State Maintenance, and Ferry Operations, sufficient funds to eliminate all overdrafts on State maintenance and construction projects, and these allocations shall not be diverted to other purposes. (1997-443, s. 32.3; 2010-165, s. 2.)